

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

JOHN HOULDSWORTH,

Defendant.

)
)
)
)
)
)
)

CRIMINAL NO. 1:05 CR 248

PLEA AND COOPERATION AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Joshua R. Hochberg, Chief, Fraud Section, Criminal Division, U.S. Department of Justice, the defendant, John Houldsworth and the defendant's counsel, Lawrence Byrne, have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a single-count criminal information charging the defendant with conspiracy to file false financial reports, falsify books, records and accounts, and mislead auditors, in violation of Title 18, United States Code, Section 371. The maximum penalties for this offense are a maximum term of five years of imprisonment, a fine of \$250,000 or twice the gross gain or loss, whichever is greater, full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that

the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

5. Waiver of Appeal, Collateral Review, FOIA and Privacy Act Right

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also waives his right to challenge his conviction and sentence (or the manner in which it was determined) in any future proceeding or collateral attack, including but not limited to motions brought under Title 28, United States Code, Section 2241. The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without

limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

6. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

7. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately, or as the Court may otherwise order, and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

8. Recommendation Regarding Restitution and Criminal Fine

The defendant is entering into a separate agreement with the United States Securities and Exchange Commission (the "SEC settlement"). The United States agrees that, if defendant is ordered to pay any civil penalties and/or any disgorgement pursuant to such SEC settlement, it will recommend that the Court credit defendant with all amounts paid pursuant to the SEC settlement

when assessing the amount of restitution and/or criminal fine aspect of his sentence. Defendant understands, however, that the recommendation of the United States is not binding on the Court and that the Court may order the defendant to pay full restitution and/or a criminal fine without such credit notwithstanding the recommendation of the United States. Should the Court order the defendant to pay restitution or a criminal fine, he will not be permitted on that basis alone to withdraw his guilty plea.

9. Immunity from Further Prosecution

The United States Attorney's Office for the Eastern District of Virginia and the Fraud Section of the Criminal Division of the U.S. Department of Justice will not further criminally prosecute the defendant for the specific conduct described in the information or statement of facts.

10. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the United States. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

- d. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- e. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- f. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

11. Use of Information Provided by the Defendant Under This Agreement

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other federal, state, local and foreign prosecuting offices as well as other regulatory or judicial authorities, both foreign and domestic, if requested by the defendant. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

12. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

13. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines. It is understood that the sentence to be imposed upon the defendant is within the sole discretion of the Court. However, the United States will inform the Probation Office and the Court of: (a) this plea agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior to and subsequent to the signing of this plea agreement. In addition, if, in its sole discretion, the United States determines that the defendant has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this plea agreement, the United States will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines and 18 U.S.C. Section 3553(e) requesting the Court to sentence the defendant in light of the factors set forth in Section 5K1.1(a)(1)-(5). In addition, the parties agree that the United States reserves the right to seek any reduction of

the defendant's sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a reduction of sentence is appropriate.

14. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads

derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

15. Hyde Amendment Waiver

Defendant agrees that with respect to all charges referred to in this agreement he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law. Defendant waives any right to additional disclosure from the government in connection with the guilty plea.

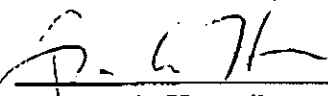
16. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty
United States Attorney

Joshua R. Hochberg
Chief, Fraud Section, Criminal Division
U.S. Department of Justice

By:


Thomas A. Hanusik
Assistant Chief, Fraud Section

Michael S. Dry
Assistant United States Attorney

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: June 2, 2005 J. Haulbl
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: June 2, 2005 Laurence Byrum
Counsel for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

JOHN HOULDSWORTH

§
§
§
§
§
§

Criminal No. 1:05 CR 248

AGREED STATEMENT OF FACTS

The United States and the defendant, John Houldsworth, ("Houldsworth") agree that had this matter proceeded to trial, the United States would have proven all of the following facts beyond a reasonable doubt:

Houldsworth, a resident of Ireland and a Chartered Accountant, was employed until approximately June, 2001, as the Chief Executive Officer of Cologne Re Dublin ("CRD"), a subsidiary of Cologne Re, which was a subsidiary of General Re Corporation ("Gen Re") of Stamford, Connecticut. Additionally, Houldsworth held the office of Chief Underwriter of another Gen Re business unit called Alternative Solutions from approximately 1998 until approximately 2004. Gen Re is a subsidiary of Berkshire Hathaway, Inc. ("Berkshire"), a publicly traded company. As such, CRD's financial results were consolidated with Berkshire's financial results. One of Gen Re's largest clients was American International Group, Inc. ("AIG"), a publicly traded insurance and financial services company. National Union Fire Insurance Company of Pittsburgh, Pennsylvania ("NUFIC") and Hartford Steam Boiler Inspection and Insurance Company ("HSB") were both wholly-owned member companies of AIG whose financial results were consolidated with AIG's financial results.

Between October 2000 and December 2001, Houldsworth and others at Gen Re and AIG agreed to and did aid and abet AIG in reporting \$500 million of fraudulently inflated reserves and related entries in financial reports filed with the U.S. Securities and Exchange Commission ("SEC") and disseminated to investors throughout the world.

In mid-November 2000, Houldsworth was told that AIG's Chief Executive Officer ("CEO") had called Gen Re's CEO and asked if Gen Re could lend AIG up to \$500 million in reserves on a short-term basis through a loss portfolio transfer without transferring any real risk of loss to AIG. Houldsworth was told that AIG had decreased – or released – reserves in order to increase its publicly reported financial results for the prior quarter and was soliciting this transaction as a means of hiding reserve releases. Houldsworth and others knew that most of the CRD loss portfolios being considered for the proposed transaction were already reinsured and that losses in those portfolios should not exceed the amounts available to pay the associated claims. Thus, CRD already accounted for those loss portfolios as money owed by CRD to those being insured by CRD (i.e., as deposits) not as reinsurance reserves. Houldsworth also knew that AIG wanted to account for those loss portfolios as reinsurance on which AIG had assumed risk and on which AIG could make or lose money (i.e., as reserves). Houldsworth and others discussed how the Gen Re side of the transaction should be executed by a non-United States entity so that it would not be apparent that Gen Re had ceded (i.e., given) a large loss portfolio to AIG and that the counter-parties to the transaction were utilizing different accounting treatments. Houldsworth and others were reminded repeatedly that the proposed transaction was highly confidential and they were instructed by Gen Re's CEO to "keep the circle of people involved in this as tight as possible."

Between October 2000 and December 2001, Houldsworth and others at Gen Re and AIG agreed to and did aid and abet AIG in reporting \$500 million of fraudulently inflated reserves and related entries in financial reports filed with the U.S. Securities and Exchange Commission ("SEC") and disseminated to investors throughout the world.

In mid-November 2000, Houldsworth was told that AIG's Chief Executive Officer ("CEO") had called Gen Re's CEO and asked if Gen Re could lend AIG up to \$500 million in reserves on a short-term basis through a loss portfolio transfer without transferring any real risk of loss to AIG. Houldsworth was told that AIG had decreased – or released – reserves in order to increase its publicly reported financial results for the prior quarter and was soliciting this transaction as a means of hiding reserve releases. Houldsworth and others knew that most of the CRD loss portfolios being considered for the proposed transaction were already reinsured and that losses in those portfolios should not exceed the amounts available to pay the associated claims. Thus, CRD already accounted for those loss portfolios as money owed by CRD to those being insured by CRD (i.e., as deposits) not as reinsurance reserves. Houldsworth also knew that AIG wanted to account for those loss portfolios as reinsurance on which AIG had assumed risk and on which AIG could make or lose money (i.e., as reserves). Houldsworth and others discussed how the Gen Re side of the transaction should be executed by a non-United States entity so that it would not be apparent that Gen Re had ceded (i.e., given) a large loss portfolio to AIG and that the counter-parties to the transaction were utilizing different accounting treatments. Houldsworth and others were reminded repeatedly that the proposed transaction was highly confidential and they were instructed by Gen Re's CEO to "keep the circle of people involved in this as tight as possible."

Houldsworth was directed and agreed to structure a transaction whereby AIG was able to book approximately \$500 million in reinsurance risk reserves without actually assuming any "real" risk. Houldsworth and others knew that AIG could not properly report additional reserves from this transaction. Indeed, Houldsworth asked Gen Re's Chief Financial Officer ("CFO") whether it would be problematic if anyone ever determined that CRD had accounted for the transaction differently from AIG and the CFO responded: "we told AIG that there would not be symmetrical accounting here . . . we told them that was one of the aspects of the deal they had to digest."

The specific means employed by Houldsworth and others to aid and abet AIG's fraudulent financial reporting included: (i) structuring a series of sham transactions which enabled AIG to report a total of \$500 million in phony reserves, in \$250 million increments, in periodic filings with the SEC during the fourth quarter of 2000 and the first quarter of 2001; (ii) creating false records that made it appear AIG was being paid \$10 million for assuming CRD's reinsurance risk when in reality AIG was not being paid but was paying Gen Re \$5 million for executing this sham transaction; and (iii) creating false records to make it appear that CRD had asked AIG to reinsure CRD's risk, when, in fact, AIG had asked Gen Re to participate in this transaction and AIG was not reinsuring any risk because there was no real risk.

Houldsworth and others knew that AIG would not assume any real risk as a result of these transactions, but the contracts they utilized for the sham "reserve" transactions made it appear that AIG, through NUFIC, had assumed reinsurance risk because, under the terms of the contracts as drafted by Houldsworth and others, NUFIC was ceded (i.e., given) a total of \$500 million in premiums in exchange for reinsuring \$600 million in potential losses. The contracts

also falsely provided that CRD would pay NUFIC a \$10 million loss transfer payment as part of the consideration for NUFIC reinsuring CRD's risk. However, the contracts purposefully omitted that AIG had secretly agreed to make Gen Re whole for that \$10 million loss transfer payment and also to pay Gen Re a separate \$5 million fee for participating in this scheme. The true payment terms were intentionally omitted from the transaction documents in order to mislead AIG's auditors, who might otherwise question why AIG would pay to assume another party's risk. In addition, Gen Re's CFO told Houldsworth and others that AIG was going to honor the true payment terms and pay Gen Re by enriching a separate contract.

During a telephone call in early December, 2000, Houldsworth and others discussed whether AIG wanted an offer letter from CRD as part of a "paper trail" to make it appear that CRD had asked AIG to assume risk. Houldsworth drafted and sent AIG a false offer letter in mid-December, approximately six weeks after AIG's CEO asked Gen Re's CEO to complete this transaction. At the end of December, 2000, Houldsworth received an email from an AIG executive confirming that AIG wanted to implement the first part (\$250 million) of the sham reserve transaction and, at the end of August, 2001, that same AIG executive sent Houldsworth a signed contract for that half of the transaction, effective December 1, 2000. Similarly, in February 2001, Houldsworth learned that AIG wanted to book the second part of the reserve transaction (\$250 million) during the first quarter of 2001. AIG sent CRD a signed contract, with an effective date of March 31, 2001, for that second half of the transaction in October 2001.

In approximately October 2001, Houldsworth and others, following specific instructions from a Gen Re executive to keep the matter confidential, memorialized a procedure

to keep the sham "reserve" contracts between CRD and AIG subsidiary NUFIC locked in an executive's drawer at CRD's offices in Dublin, with limited access by others.

The two sham "reserve" contracts required CRD to pay AIG subsidiary NUFIC \$5 million per contract (\$10 million in total) as a loss transfer payment within thirty days after each contract was executed. However, no money was exchanged until December, 2001. In order to appear to comply with the sham reserve contracts, but still disguise the secret payment terms, AIG did, in fact, enrich a separate contract with Gen Re. Specifically, AIG commuted -- or terminated -- a contract between Gen Re and another AIG company, called HSB, in such a way that Gen Re was left with an extra \$15.2 million. Gen Re kept \$2.6 million for itself as one-half of AIG's promised \$5 million fee (plus interest) from the sham reserve transaction. Gen Re then transferred the remaining \$12.6 million to CRD so that CRD could keep \$2.6 million for its half of the fee from AIG and pay AIG subsidiary NUFIC a \$10 million loss transfer payment as required in the sham reserve contracts. Thus, AIG secretly paid Gen Re the \$5 million fee (plus interest) and AIG secretly pre-funded the \$10 million payment from CRD back to AIG subsidiary NUFIC.

DATED: June 2, 2005

Respectfully submitted,

Paul J. McNulty
United States Attorney

Joshua R. Hochberg
Chief, Fraud Section, Criminal Division
U.S. Department of Justice

By:



Thomas A. Hanusik
Assistant Chief, Fraud Section

Michael S. Dry
Assistant United States Attorney

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea and cooperation agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date: JUNE 2, 2005

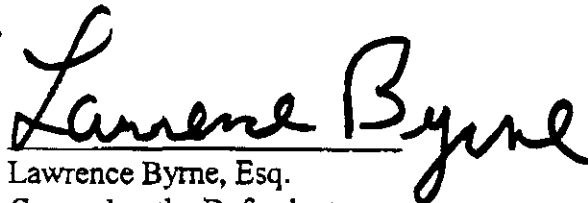


John Houldsworth
Defendant

Defense Counsel's Signature

I am the attorney for defendant John Houldsworth. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date:

June 2, 2015 
Lawrence Byrne, Esq.
Counsel to the Defendant